

FIRST REGULAR SESSION

SENATE BILL NO. 431

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SMITH.

Read 1st time February 23, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

1701S.011

AN ACT

To amend chapter 135, RSMo, by adding thereto one new section relating to the green building tax credit.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 135, RSMo, is amended by adding thereto one new section, to be known as section 135.032, to read as follows:

135.032. 1. This section shall be known and may be cited as the "Green Building Tax Credit Act".

2. As used in this section, the following terms mean:

(1) "Applicant", a taxpayer who is either the owner or contract purchaser of a building, and is applying for a green building tax credit for such building;

(2) "Base building", all areas of a building not intended for occupancy by a tenant or owner, including, but not limited to, the structural components of the building, exterior walls, floors, windows, roofs, foundations, chimneys and stacks, parking areas, mechanical rooms and mechanical systems, and owner-controlled and/or operated service spaces, sidewalks, main lobby, shafts and vertical transportation mechanisms, stairways, and corridors;

(3) "Commissioning", the process of verifying and ensuring that the entire building and the systems within are designed, constructed, functionally tested, and calibrated to operate as intended;

(4) "Department", the department of natural resources;

(5) "Director", the director of the department of natural resources;

(6) "Economic development area", an economic development area as defined under section 99.805, RSMo;

22 **(7) "Eligible building", a building located within the state which**
23 **is:**

24 **(a) A residential multi-family building with at least four**
25 **habitable stories that contains, in the aggregate, at least ten thousand**
26 **square feet of interior space;**

27 **(b) One or more residential multi-family buildings with at least**
28 **four habitable stories that are part of a single or phased construction**
29 **project that contains, in the aggregate, at least twenty thousand square**
30 **feet of interior space, provided that, in any single phase of such**
31 **project, at least ten thousand square feet of interior space is under**
32 **construction or rehabilitation;**

33 **(c) A residential, single-family, detached dwelling;**

34 **(d) A building used for commercial or industrial purposes; or**

35 **(e) Any combination of buildings described in paragraphs (a) to**
36 **(d) of this subdivision;**

37 **(8) "Energy and Atmosphere Credit Number One", the credit**
38 **awarded by the United States Green Building Council, which requires**
39 **increased energy performance above the standard as defined in the**
40 **most current version of the LEED-NC or LEED-EB rating system;**

41 **(9) "Energy and Atmosphere Credit Number Three", the credit**
42 **awarded by the United States Green Building Council, which requires**
43 **additional commissioning above the fundamental commissioning**
44 **prerequisite as defined in the most current version of the LEED-NC or**
45 **LEED-EB rating system;**

46 **(10) "Gold rating", the rating in compliance with, or exceeding,**
47 **the second highest rating awarded in the LEED certification process;**

48 **(11) "Green base building", a base building that meets all**
49 **requirements in the most current version of the United States Green**
50 **Building Council's LEED-CS or that meets the most current**
51 **requirements for at least a three globes rating under Green Globes;**

52 **(12) "Green building", a building that is designed to achieve**
53 **integrated systems design and construction so as to significantly**
54 **reduce or eliminate the negative impact of the built environment on the**
55 **following:**

56 **(a) Site conservation and sustainable planning;**

- 57 **(b) Water conservation and efficiency;**
- 58 **(c) Energy efficiency and renewable energy;**
- 59 **(d) Conservation of materials and resources; and**
- 60 **(e) Indoor environmental quality and human health;**
- 61 **(13) "Green Globes", an environmental assessment and rating tool**
62 **for green buildings developed by the Green Building Initiative;**
- 63 **(14) "Green tenant space", a tenant space as defined under**
64 **subdivision (25) of this section that meets:**
- 65 **(a) All requirements in the most current version of the United**
66 **States Green Building Council's LEED-CI; or**
- 67 **(b) The most current requirements for at least a three globes**
68 **rating under Green Globes;**
- 69 **(15) "Green whole building", a whole building that meets:**
- 70 **(a) All requirements in the most current version of the United**
71 **States Green Building Council's LEED-NC, as amended from time to**
72 **time; or**
- 73 **(b) All requirements in the most current version of the United**
74 **States Green Building Council's LEED-EB; or**
- 75 **(c) The most current requirements for at least a three globes**
76 **rating under Green Globes;**
- 77 **(16) "LEED", the Leadership in Energy and Environmental Design**
78 **green building rating system and guidelines developed by the United**
79 **States Green Building Council;**
- 80 **(17) "LEED-CI", the most current rating system guidelines**
81 **developed for commercial interiors;**
- 82 **(18) "LEED-CS", the most current LEED rating system guidelines**
83 **developed for the core and shell of buildings otherwise known as the**
84 **base building;**
- 85 **(19) "LEED-EB", the most current LEED rating system guidelines**
86 **developed for existing buildings;**
- 87 **(20) "LEED-NC", the most current LEED rating system guidelines**
88 **developed for new construction and major renovations;**
- 89 **(21) "Platinum rating", the rating in compliance with, or**

90 exceeding, the highest rating awarded in the LEED certification
91 process;

92 (22) "Silver rating", the rating in compliance with, or exceeding,
93 the third highest rating awarded in the LEED certification process;

94 (23) "State tax liability", in the case of a business taxpayer, any
95 liability incurred by such taxpayer pursuant to the provisions of
96 chapters 143, 147, 148, and 153, RSMo, excluding sections 143.191 to
97 143.265, RSMo, and related provisions, and in the case of an individual
98 taxpayer, any liability incurred by such taxpayer pursuant to the
99 provisions of chapter 143, RSMo, excluding sections 143.191 to 143.265,
100 RSMo, and related provisions;

101 (24) "Taxpayer", a person, firm, a partner in a firm, corporation,
102 or a shareholder in an S corporation doing business in the state of
103 Missouri and subject to the state income tax imposed by the provisions
104 of chapter 143, RSMo, or a corporation subject to the annual
105 corporation franchise tax imposed by the provisions of chapter 147,
106 RSMo, or an insurance company paying an annual tax on its gross
107 premium receipts in this state, or other financial institution paying
108 taxes to the state of Missouri or any political subdivision of this state
109 pursuant to the provisions of chapter 148, RSMo, or an express
110 company which pays an annual tax on its gross receipts in this state
111 pursuant to chapter 153, RSMo, or an individual subject to the state
112 income tax imposed by the provisions of chapter 143, RSMo, or any
113 charitable organization which is exempt from federal income tax and
114 whose Missouri unrelated business taxable income, if any, would be
115 subject to the state income tax imposed under chapter 143, RSMo;

116 (25) "Tenant space", the portion of a building intended for
117 occupancy by a tenant or occupying owner;

118 (26) "United States Green Building Council", the specific council
119 which measures and evaluates the energy and environmental
120 performance of a building according to its own Leadership in Energy
121 and Environmental Design Rating system;

122 (27) "Whole building", the entire building, composed of the base

123 **building and tenant space.**

124 **3. (1) A green building tax credit may be available to a taxpayer**
125 **for:**

126 **(a) The construction of a green building, which may include the**
127 **base building, tenant space, or both; or**

128 **(b) The rehabilitation of an existing non-green building into a**
129 **green building, which may include the base building, tenant space, or**
130 **both.**

131 **(2) The credit amount shall be the sum of the following credit**
132 **components, whichever are applicable:**

133 **(a) The green whole building credit component shall be available**
134 **to a taxpayer for either the construction of a green building or the**
135 **rehabilitation of a building which is not a green whole building into a**
136 **green whole building. The green whole building credit component shall**
137 **not be allowed for any taxable year unless all the requirements under**
138 **subsection 10 of this section are met; and**

139 **a. The whole building achieves a Silver, Gold, or Platinum rating**
140 **as approved by the LEED-NC Green Building Rating System, as**
141 **amended from time to time, or the most recent version, for a new**
142 **building and for major renovations, or LEED Green Building Rating**
143 **System Version LEED-EB, or the most recent version, for an existing**
144 **building; or**

145 **b. The whole building achieves at least a three globes rating**
146 **under the most current requirements of Green Globes;**

147 **(b) The green base building credit component shall be available**
148 **to a taxpayer for either the construction of a green base building or the**
149 **rehabilitation of a building, which is not a green base building, into a**
150 **green base building. The green base building credit component shall**
151 **not be allowed for any taxable year unless all the requirements under**
152 **subsection 10 of this section are met; and**

153 **a. The base building achieves a Silver, Gold, or Platinum rating**
154 **as approved by the LEED-CS Green Building Rating System, or the**
155 **most recent version thereof; or**

156 **b. The base building achieves at least a three globes rating under**
157 **the most current requirements of Green Globes;**

158 **(c) The green tenant space credit component shall be available**
159 **to a taxpayer for constructing green tenant space or rehabilitating**
160 **tenant space, which is not green tenant space, into green tenant**
161 **space. The green tenant space credit component shall not be allowed**
162 **for a taxable year unless all the requirements under subsection 10 of**
163 **this section are met; and**

164 **a. The tenant space achieves a Silver, Gold, or Platinum rating**
165 **as approved by the LEED-CI Green Building Rating System, or the most**
166 **recent version thereof; or**

167 **b. The tenant space achieves at least a three globes rating under**
168 **the most current requirements of Green Globes.**

169 **(3) For each component eligible to receive credit, such credit**
170 **component amount shall not exceed the maximum amount specified in**
171 **the preliminary certificate issued pursuant to subsections 5 or 6 of this**
172 **section.**

173 **4. A taxpayer may apply for a green building tax credit provided**
174 **that the building subject to the green building tax credit is located**
175 **within the state and the taxpayer will be the owner or contract**
176 **purchaser of the building at the time of erection, construction,**
177 **installation, rehabilitation, or acquisition of the proposed building.**

178 **5. (1) Prior to construction or rehabilitation of a proposed**
179 **building, a taxpayer shall apply to the department for preliminary**
180 **certification.**

181 **(2) An application for preliminary certification shall be made in**
182 **writing on a form prepared by the department and shall contain:**

183 **(a) A statement that the taxpayer plans to construct a building**
184 **that meets the requirements under subsection 10 of this section;**

185 **(b) A detailed description of the proposed building and its**
186 **operation and information showing that the building shall operate as**
187 **represented in the application;**

188 **(c) The estimated start and finish date of the construction or**

189 rehabilitation;

190 (d) Evidence of official registration in the LEED system or Green
191 Globes rating system; and

192 (e) Any other information determined by the director to be
193 necessary prior to issuance of a preliminary certificate.

194 (3) The director may allow an applicant to file the preliminary
195 application after the start date of the construction or rehabilitation of
196 the building if the director finds that filing the application before the
197 start date is inappropriate because special circumstances render filing
198 earlier unreasonable.

199 (4) If the director determines that the proposed construction or
200 rehabilitation is technically feasible and should operate in accordance
201 with the representations made by the applicant, and is in accordance
202 with the provisions under subsection 10 of this section and any
203 applicable rules or standards adopted by the director, the director shall
204 issue a preliminary credit certificate. The preliminary credit
205 certificate shall state the following:

206 (a) The first taxable year for which the credit may be applied;

207 (b) The expiration date of the tax credit. Such expiration date
208 may be extended at the discretion of the director in order to avoid
209 unwarranted hardship; and

210 (c) The maximum amount of the total credit allowed and the
211 maximum amount of credit allowed in any single tax year.

212 (5) If the director determines that the construction or
213 rehabilitation does not comply with the provisions under subsection 10
214 of this section and applicable rules and standards, the director shall
215 issue an order denying certification.

216 6. (1) To change a project that has already received preliminary
217 certification, the taxpayer shall file a written request to the director
218 which states:

219 (a) A detailed description of the changes;

220 (b) The reasons for the changes; and

221 (c) The effects that the changes will have on the amount of tax

222 credit stated by the preliminary certification.

223 (2) The director shall make the determination as to whether the
224 changed project complies with the requirements under subsection 10
225 of this section. If the changed project complies with the requirements
226 under subsection 10 of this section, then the director shall issue an
227 amended preliminary certification. If the changed project fails to
228 comply with the requirements under subsection 10 of this section, then
229 the director shall issue an order that revokes the preliminary
230 certification.

231 7. (1) A taxpayer may apply to the department for final
232 certification of a building:

233 (a) If the department issued preliminary certification for the
234 building under subsection 5 of this section; and

235 (b) After completion of construction or rehabilitation of the
236 proposed building.

237 (2) An application for final certification shall be made in writing
238 on a form prepared by the department and shall contain:

239 (a) A statement that the conditions of the preliminary
240 certification have been complied with;

241 (b) An eligibility certificate from the project architect or
242 professional engineer licensed to practice in the state of Missouri or
243 from a LEED accredited professional that consists of a certification by
244 either:

245 a. The Green Building Initiative that the building with respect
246 to which the credit is claimed meets the requirements for a Green
247 Globes rating; or

248 b. The United States Green Building Council that the building
249 with respect to which the credit is claimed is LEED certified and that
250 in achieving its LEED rating, the building has earned at least four
251 LEED points for Energy and Atmosphere Credit Number One and the
252 Energy and Atmosphere Credit Number Three;

253 (c) A statement of the level of Green Globes or LEED
254 performance achieved by the building to permit determination of the

255 **proper credit amount under subsection 12 of this section;**

256 **(d) A statement that the building is in operation; and**

257 **(e) Any other information determined by the director to be**
258 **necessary prior to issuance of a final certificate, including proof of**
259 **inspection of the building by the department.**

260 **8. (1) Any credit issued to a taxpayer pursuant to this section**
261 **with respect to a building that is subsequently sold, shall be allowable**
262 **to the new owner, provided such credit would have been allowable**
263 **under this section to the prior owner. Credit for the year of sale shall**
264 **be allocated between the parties on the basis of the number of days**
265 **during such year that the interest was held by each.**

266 **(2) In the case of allowance of credit under this section to a**
267 **successor owner as provided in subdivision (1) of this subsection, the**
268 **director shall have the authority to reveal to the successor owner any**
269 **information, with respect to the credit of the prior owner, which is the**
270 **basis for the denial in whole or in part of the credit claimed by such**
271 **successor owner.**

272 **9. A taxpayer shall be eligible for a green building tax credit**
273 **against a state tax liability provided such taxpayer complies with the**
274 **requirements of subsection 10 of this section and the building meets the**
275 **definition of an eligible building. The amount of credit shall be**
276 **determined pursuant to subsection 12 of this section, but the total**
277 **amount of tax credits issued to a single taxpayer under this section**
278 **shall not exceed fifty thousand dollars per tax year.**

279 **10. (1) The green building tax credit shall not be allowed for any**
280 **taxable year unless the following are met:**

281 **(a) The taxpayer has obtained and filed a preliminary credit**
282 **certificate issued under subsections 5 or 6 of this section;**

283 **(b) The building is in service as shown by a certificate of**
284 **occupancy; and**

285 **(c) The whole building, base building, or tenant space has**
286 **achieved either:**

287 **a. At least a three globes rating under the most current**
288 **requirements for Green Globes; or**

289 **b. A Silver, Gold, or Platinum rating as approved by the**
290 **applicable and most recent LEED Green Building Rating System and in**
291 **achieving its LEED rating, the whole building, base building, or tenant**
292 **space shall earn:**

293 **i. At least four LEED points for Energy and Atmosphere Credit**
294 **Number One, or the equivalent points under any subsequent version of**
295 **LEED; and**

296 **ii. The point for Energy and Atmosphere Credit Number Three,**
297 **or the equivalent points under any subsequent version of LEED.**

298 **(2) For each component eligible to receive credit under**
299 **subsection 3 of this section, once construction is complete and an**
300 **occupancy certificate is received, such credit component amount shall**
301 **be allowed for each of the next four succeeding taxable years provided**
302 **that the taxpayer obtains an eligibility certificate that meets the**
303 **requirements for an eligibility certificate as described in paragraph (b)**
304 **of subdivision (2) of subsection 7 of this section.**

305 **(3) When filing with the department of revenue, the taxpayer**
306 **shall file the eligibility certificate and the preliminary credit**
307 **component certificate with the claim for credit.**

308 **11. For tax years beginning on or after January 1, 2010, the tax**
309 **credits authorized under this section may be used to satisfy taxes owed**
310 **under chapters 143, 147, and 148, RSMo, excluding sections 143.191 to**
311 **143.265, RSMo, in the tax year the credit is issued. Tax credits issued**
312 **under this section shall be refundable and may be transferred, sold, or**
313 **assigned by notarized endorsement, which names the transferee. In no**
314 **case shall the aggregate amount of all tax credits issued under this**
315 **section exceed one million dollars per tax year.**

316 **12. Within one hundred twenty days of the enactment of this act,**
317 **the department shall promulgate rules, in accordance with the**
318 **provisions of this section, to:**

319 **(1) Determine the amount of green building tax credit available**
320 **to a taxpayer based on the following:**

321 **(a) The amount of floor space in the building;**

322 **(b) The square footage of the building;**

323 **(c) The Green Globes rating or the level of LEED rating achieved**
324 **by the building, with higher ratings corresponding to greater tax**

325 credits; and

326 (d) Whether the building is located in an economic development
327 area with a higher tax credit corresponding to those buildings located
328 in an economic development area;

329 (2) Determine allowable credit for each of:

330 (a) The green whole building credit component;

331 (b) The green base building credit component; and

332 (c) The green tenant space credit component.

333 Any rule or portion of a rule, as that term is defined in section 536.010,
334 RSMo, that is created under the authority delegated in this section
335 shall become effective only if it complies with and is subject to all of
336 the provisions of chapter 536, RSMo, and, if applicable, section 536.028,
337 RSMo. This section and chapter 536, RSMo, are nonseverable and if any
338 of the powers vested with the general assembly pursuant to chapter
339 536, RSMo, to review, to delay the effective date, or to disapprove and
340 annul a rule are subsequently held unconstitutional, then the grant of
341 rulemaking authority and any rule proposed or adopted after August
342 28, 2009, shall be invalid and void.

343 13. (1) The director may order the revocation of the final
344 certificate issued under subsection 7 of this section if the director finds
345 that:

346 (a) The certification was obtained by fraud or misrepresentation;
347 or

348 (b) The holder of the certificate has failed substantially to
349 construct the building in compliance with the plans, specifications, and
350 procedures in such certificate.

351 (2) As soon as the order of revocation under this subsection
352 becomes final, the director shall notify the department of revenue of
353 such order.

354 (3) If the certificate is ordered revoked pursuant to paragraph
355 (a) of subdivision 1 of this subsection, all prior tax credits provided to
356 the taxpayer by virtue of such certificate shall be forfeited, and upon
357 notification under subdivision (2) of this subsection, the department of
358 revenue immediately shall proceed to collect those taxes not paid by

359 the taxpayer as a result of the tax credits provided to the taxpayer
360 under this section.

361 (4) If the certificate is ordered revoked pursuant to this
362 subsection, the taxpayer shall be denied any tax credit under this
363 section in connection with such building after the date that the order
364 of revocation becomes final.

365 14. Pursuant to section 23.253, RSMo, of the Missouri sunset act:

366 (1) The tax credit authorized under this section shall
367 automatically sunset five years after the effective date of this section
368 unless reauthorized by an act of the general assembly; and

369 (2) If such program is reauthorized, the program authorized
370 under this section shall automatically sunset twelve years after the
371 effective date of the reauthorization of this section; and

372 (3) This section shall terminate on September first of the
373 calendar year immediately following the calendar year in which a
374 program authorized under this section is sunset.

Bill ✓

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